

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 9<sup>th</sup> December, 2024

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE  
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No.01 of 2024 in CrI.A. No.35 of 2024

**Appellant** : Bidhan Gurung

**versus**

**Respondent** : State of Sikkim

Application under Section 389(1)  
of the Code of Criminal Procedure, 1973

## **Appearance**

Mr. N. Rai, Senior Advocate with Mr. Pradeep Tamang, Advocate for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor for the State-Respondent.

## **ORDER**

Meenakshi Madan Rai, J.

**1.** Heard on I.A. No.01 of 2024, which is an application filed by the Appellant under Section 389(1) of the Code of Criminal Procedure, 1973, seeking suspension of the Sentence imposed on him by the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim, in S.T. (POCSO) Case No.39 of 2020 (*State of Sikkim vs. Bidhan Gurung*) and his enlargement on bail.

**2.** The Petitioner was convicted under Section 5(I) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, "POCSO Act") and under Section 376 of the Indian Penal Code (hereinafter, "IPC"). He was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹ 5,000/- (Rupees five thousand) only, for the offence under the POCSO Act (*supra*), with a default stipulation. The Learned Trial Court however observed that as the convict had been adequately

penalised under Section 6 of the POCSO Act, he was not required to be sentenced for the same offence under Section 376 of the IPC.

**3.** The Prosecution case is that the Appellant had eloped with the victim who was a minor. The victim was alleged to be seventeen years and eight months at the time of the offence, whereas the Appellant was thirty-four years.

**4.** Learned Senior Counsel for the Appellant put forth the argument that the Appellant and the victim were in a romantic relationship and the Prosecution failed to establish that the victim was a minor at the time when she willingly eloped with the Appellant. The Prosecution filed two Birth Certificates pertaining to the victim, of which one is alleged to be correct, while the other is allegedly incorrect. That, in the face of such vacillating evidence it cannot be said that the Prosecution proved the age of the victim, more so in the teeth of the ossification test, Exhibit P9/PW-11 which was conducted on the victim and relied on by the Prosecution, wherein the bone age estimation of the victim has been clearly indicated to be between eighteen to twenty years. That, the benefit of doubt ought to have been extended in favour of the Appellant. That, during the trial the Appellant was on bail and he did not misuse the terms thereof. Besides, the victim is also married now and is a mother. That, the Appellant is a permanent resident of Sikkim, residing at Bojoghari, Gangtok, Sikkim and will not abscond if enlarged on bail. That, the facts and circumstances enumerated above may be given due consideration and the sentence suspended and the Appellant enlarged on bail.

**5.** Learned Additional Public Prosecutor for the State-Respondent objected to the Petition for bail on grounds that one of the Birth Certificates furnished by the Prosecution during the trial

established the age of the victim and as she was a minor her consent cannot be a valid consent.

**6.** Having heard the rival contentions advanced and the facts and circumstances thereof and given our due consideration, we have also noted the conduct of the Appellant before the Learned Trial Court, where he was on bail and continued to remain appear thereon on all dates fixed. On consideration of the gamut of the submissions advanced before us, we find that this is a fit case where the Appellant can be and is enlarged on bail, subject to the following conditions;

- (i) *The Appellant shall furnish PB&SB of ₹ 20,000/- (Rupees twenty thousand) only, each, with one solvent surety, to the satisfaction of the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim.*
- (ii) *He shall, however, not leave the station without the prior permission of the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim.*
- (iii) *He shall appear before this Court on all dates fixed.*
- (iv) *Should the Appellant fail to report to this Court on the dates fixed, his bail bonds stand cancelled and he shall be taken into custody forthwith.*

**7.** Sentence imposed by the Learned Trial Court against the Appellant stands suspended till further orders.

**8.** The observations made hereinabove while disposing of this petition, shall in no manner be construed as findings on the merits of the Appeal.

**9.** I.A. No.01 of 2024 is allowed and disposed of accordingly.

**10.** A copy of this Order be forwarded to the Learned Trial Court for information and compliance.

**( Bhaskar Raj Pradhan )**  
**Judge**  
09-12-2024

**( Meenakshi Madan Rai )**  
**Judge**  
09-12--2024